

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO HERRING  
ASSOCIATION, et al.,

Plaintiffs,

v.

PACIFIC GAS AND ELECTRIC  
COMPANY, et al.,

Defendants.

Case No. 14-cv-04393-WHO (JCS)

**ORDER GRANTING PG&E'S MOTION  
TO DENY PLAINTIFFS' REQUEST TO  
THE NEUTRAL TECHNICAL EXPERT**

Pursuant to the Mediated Investigation Agreement between the parties, Plaintiffs submitted a dispute to the Neutral Technical Expert (NTE). In that dispute, Plaintiffs sought information from PG&E's consultant Haley and Aldrich (H&A) the basis for H&A's statement that based on "more than 20 years of experience, lead is not a significant contaminant of concern" in MGP sites. PG&E has now asked this court to rule that this dispute is not within the purview of the NTE (the "Motion").

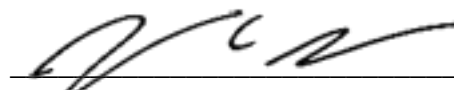
The scope of the NTE's authority, as relevant here, is to resolve "all Technical Disputes concerning a Party's compliance with obligations to provide and/or share data/information under the MIA and ADDENDA . . . ." Fourth Addendum to MIA at paragraph B.2.a.ii. "Technical Dispute" is defined in the FIRST ADDENDUM to the MIA as "a non-legal dispute between the parties regarding the application of scientific principles or procedures, in the conduct of the mediated investigation." Second Addendum to MIA at paragraph 2. Only Technical Disputes may be submitted to the NTE under the relevant provision of the Fourth Addendum.

The meaning of the Fourth Addendum when it describes "Technical Disputes" concerning "compliance with obligations" to produce information is unclear. It must be a non-legal dispute according to the definition. For example, the question of whether lead is MGP Residue, that is

whether lead is a waste product of MGP operations, is a Technical Dispute. Whatever the meaning of the term, the court finds that the request that a consultant provide all of its experience over 20 years covering work for many non-parties is not a technical dispute between the parties regarding their obligations to produce information under the agreement. Accordingly, the Motion is **GRANTED**.

IT IS SO ORDERED.

Dated: July 10, 2017



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JOSEPH C. SPERO  
Chief Magistrate Judge